

ROBERT D. BLUNTZER

IBLA 85-380

Decided January 23, 1987

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer. NM-A-60329 (TX).

Affirmed as modified in part; set aside in part and remanded.

1. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Lands Subject To -- Oil and Gas Leases: Noncompetitive Leases

BLM may properly reject an over-the-counter noncompetitive oil and gas lease offer to the extent that it covers acquired military lands formerly included in an oil and gas lease which was relinquished. Lands formerly embraced within oil and gas leases that have been relinquished, to the extent they are subject to noncompetitive leasing, must be leased pursuant to the simultaneous filing procedures at 43 CFR Subpart 3112.

2. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Lands Subject to

A detailed reevaluation to determine if the lands are within a known geologic structure is a statutory prerequisite to leasing acquired military lands within the City of Corpus Christi, Texas, pursuant to the Act of October 19, 1984, P.L. 98-529, 98 Stat. 2697. A noncompetitive lease may not be issued for such lands where there is no indication in the record that such an evaluation has been performed.

APPEARANCES: Vince Tarleton, Esq., Houston, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Robert D. Bluntzer has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting his noncompetitive oil and gas lease offer, NM-A-60329 (TX).

On October 22, 1984, appellant filed a noncompetitive oil and gas lease offer for a 2001.86-acre tract of acquired land described by metes and bounds and situated in Nueces County, Texas, within the Corpus Christi Naval Air Station. The lease offer was filed pursuant to section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1982). By decision dated January 9, 1985, BLM rejected appellant's lease offer "in its entirety" because 1789.45 acres of the land described in the offer had been included in former oil and gas lease NM-A-0315773 (TX), 1/ and, hence, was available for leasing only under the simultaneous oil and gas leasing procedures, and because the remainder of the tract was not properly described by courses and distances in accordance with 43 CFR 3111.2-2(b). The decision also noted a portion of the land which had been included in protective lease NM-A-0315773 (TX), was situated within the undefined known geological structure (KGS) of the Flour Bluff Field effective April 3, 1952, 2/ and available for leasing only by competitive bidding.

In his statement of reasons for appeal, appellant contends that the lands, which are acquired military lands, were available for leasing pursuant to over-the-counter offers at the time he filed his offer because the Secretarial order which opened acquired military lands to leasing provided that "the applicability of 43 CFR Part 3110 [Noncompetitive Leases] to all acquired military lands \* \* \* is restored as of August 10, 1981." 46 FR 37250 (July 20, 1981). The Secretarial order implementing the August 4, 1976, amendment of section 3 of the Mineral Leasing Act for Acquired Lands, which extended leasing authority to acquired military lands, authorized the filing of over-the-counter oil and gas lease offers for these lands commencing on August 10, 1981. The order provided that all offers filed by August 28, 1981, would be treated as simultaneously filed with priority, to the extent of conflicts, to be determined by a drawing. 46 FR 37250 (July 20, 1981). While appellant concedes the simultaneous filing procedure of 43 CFR Subpart 3112 would apply to lands in leases expiring, terminating, or relinquished after August 10,

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1/ The record indicates that oil and gas lease NM-A-0315773 (TX) was issued effective Dec. 1, 1962, covering 1837.44 acres of land, and was relinquished effective Nov. 18, 1974, "[a]fter production from \* \* \* [29 oil and gas] wells ceased." Memorandum to State Director, from District Manager, Tulsa District Office, dated Feb. 22, 1984.

The land was initially acquired by the Navy Department as part of the Corpus Christi Naval Air Station and subsequently jurisdiction over the oil and gas deposits in the land was transferred to the Department of the Interior by Public Land Order (PLO) 2424 (26 FR 6241 (July 12, 1961)), in order to facilitate leasing to avoid drainage.

2/ In the Feb. 22, 1984, memorandum to the State Director, the District Manager, Tulsa District Office, stated that in order "[t]o facilitate future [competitive] oil and gas leasing \* \* \* the area of the Corpus Christi Naval Air Station previously leased competitively by Federal oil and gas lease NM-A-0315773, is hereby classified as being within the undefined known geologic structure of the Flour Bluff Field, effective Apr. 3, 1952, the date of the original determination that potential oil and gas drainage was taking place [from land within the naval air station]."

1981, he argues that relinquishment of the earlier lease prior to the statutory extension of the Mineral Leasing Act for Acquired Lands to military installations does not dictate such a result. <sup>3/</sup>

Appellant also disputes the KGS determination on the basis that BLM failed, in defining the KGS, to take into account the lack of interest in the lands and a "geologic report" which demonstrated that the productive formations within the lands involved had been "exhausted" by prior production. Moreover, appellant argues that BLM failed to reevaluate the KGS determination as required by the Act of October 19, 1984, P.L. 98-529, 98 Stat. 2697 (1984). <sup>4/</sup> Appellant concludes that, in this light, the question of the adequacy of the land description in his lease offer is "moot."

[1] The first question which we must address is whether the lands formerly included in relinquished lease NM-A-0315773 (TX), to the extent they are available for noncompetitive leasing, are subject to the filing of over-the-counter lease offers or leasable only under the simultaneous filing procedures at 43 CFR Subpart 3112. The applicable regulation, 43 CFR 3112.1-1(a), provides that "all lands which are not within a known geological structure of a producing oil or gas field \* \* \* and were covered by Federal oil and gas leases which have been cancelled, terminated, relinquished or expired are subject to leasing only under this subpart [43 CFR Subpart 3112 - Simultaneous Filing]." Thus, it is well established that BLM must reject a noncompetitive over-the-counter lease offer to the extent it covers land formerly included in a "Federal oil and gas lease" which has been "cancelled, terminated, relinquished or expired" within the meaning of 43 CFR 3112.1-1(a). A.Z. Shows, 82 IBLA 86 (1984); Lowell J. Simons, 66 IBLA 338 (1982); see Thor-Westcliffe Development, Inc. v. Udall, 314 F.2d 257 (D.C. Cir.), cert. denied, 373 U.S. 951 (1963). This regulatory requirement has been uniformly applied even where a substantial interval occurred between termination of the prior lease and further leasing. See David A. Provinse, 38 IBLA 347 (1978). Further, this regulatory requirement has been upheld even where cancellation of an erroneously issued intervening lease issued in response to an over-the-counter offer was required. Mike Guffy, 78 IBLA 139 (1983); Conoco, Inc., 75 IBLA 83 (1983).

We are not persuaded that this requirement imposed by duly promulgated regulation was superseded by the July 1981 Secretarial order opening acquired

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<sup>3/</sup> Appellant states that oil and gas lease NM-A-0315773 (TX), was issued pursuant to the Secretary's "implied authority" to lease in order to prevent drainage by drilling on adjacent land, citing 40 Op. Att'y Gen. 41 (1941). See also 43 CFR 3100.2-1.

<sup>4/</sup> The Act of Oct. 19, 1984, provides that acquired lands within the corporate limits of Corpus Christi, Texas, including the lands involved herein, were available for leasing notwithstanding the exclusion of land in incorporated cities in section 3 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1982), but that "prior to any such leasing the Department of the Interior must do a detailed reevaluation to determine if the lands are within a known geologic structure."

military lands to oil and gas leasing. 46 FR 37250 (July 20, 1981). The order lifting the moratorium on leasing such lands restored "the applicability of 43 CFR Part 3110 to all acquired military lands" effective August 10, 1981. The regulations at 43 CFR Subpart 3112, governing simultaneous filing procedures for lands previously leased, are a part of the regulations at 43 CFR Part 3110. The order provided that over-the-counter lease offers may be filed beginning August 10, 1981, and that as to all conflicting over-the-counter offers filed by close of business on August 28, 1981, priority would be determined by a public drawing. What the order did not do was change the regulations governing availability of lands for over-the-counter as opposed to simultaneous leasing any more than it changed availability of land for noncompetitive as opposed to competitive leasing.

We also note that the lands embraced in appellant's lease offer are apparently situated within the corporate limits of Corpus Christi, Texas. These lands were not subject to leasing under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 352 (1982), at the time of the Secretarial order of July 1981. The terms of 30 U.S.C. § 352 (1982), expressly exclude from leasing those lands "situated within incorporated cities." Authorization to lease acquired military lands within the city of Corpus Christi did not exist until enactment of the Act of October 19, 1984, P.L. 98-529, 98 Stat. 2697. Appellant's over-the-counter lease offer was filed under the authority of P.L. 98-529 on October 22, 1984. Thus, the July 1981 Secretarial order could not have superseded the simultaneous filing regulations for the lands in appellant's lease offer.

Accordingly, we conclude that BLM properly rejected appellant's lease offer to the extent that it encompassed lands which had been subject to former lease NM-A-0315773 (TX), and which were subject to noncompetitive leasing only pursuant to the simultaneous oil and gas leasing system. 5/

With respect to the remainder of the lands included in appellant's lease offer, BLM rejected the offer because of an improper land description. The applicable regulation, 43 CFR 3111.2-2(b), provides, in relevant part, where land has not been surveyed:

If the desired lands constitute less than the entire tract acquired by the United States, it shall be described by courses

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5/ Since BLM had not listed the lands included in former protective lease NM-A-0315773 (TX) in accordance with 43 CFR 3112.1-2, appellant's over-the-counter lease offer was properly rejected under 43 CFR 3112.7, which provides that "[l]ands shall be available for leasing under Subpart 3111 [over-the-counter offers] where, during the filing period under this subpart [Subpart 3112], no applications are received for a parcel, provided the lands are not determined to be within a known geologic structure of a producing oil or gas field." The lands must first be subject to a simultaneous filing period, during which no applications for the parcel are received, before BLM may accept an over-the-counter offer under 43 CFR 3112.7. See James W. Phillips, 61 IBLA 294 (1982).

and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the lands. [Emphasis added.]

See John R. Chitwood III, 84 IBLA 300 (1985). BLM cited this language in its January 1985 decision. However, the record indicates that appellant's lease offer described all of the lands in the acquired tract of land by course and distance.

BLM's January 1985 decision appears to be premised on the conclusion that appellant was required to describe the particular land remaining after exclusion of the land not available for leasing pursuant to an over-the-counter offer. We note that the record contains a "Checklist," prepared November 26, 1984, which states, with respect to appellant's lease offer: "Need m & b [metes and bounds description] for excluded area not in KGS [and] not in former [lease]." (Emphasis added.)

The Board has previously considered this issue in a similar context. In Bruce Anderson, 85 IBLA 270 (1985), the offeror described by proper metes and bounds description an entire tract of acquired land not within the area of the public land surveys. The Board cited the recognized principle that a lease offer constitutes an offer to lease any and all of the lands described therein which are available for leasing and applied the longstanding Departmental precedent that a lease offer is properly rejected as to those lands which are unavailable and adjudicated with respect to the remaining land described in the offer. Id. at 272. In Bruce Anderson, the Board reversed a BLM decision rejecting the offer as to those lands available for leasing on the ground the offeror had not initially provided a metes and bounds description of that portion of the tract available for leasing. Id. at 272. 6/

[2] Section 17(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(b)(1) (1982), provides that lands which are within the KGS of a producing oil or gas field "shall be leased \* \* \* by competitive bidding." See 43 CFR 3100.3-1. Thus, we have consistently held that where lands embraced in a noncompetitive oil and gas lease offer are designated as within a KGS prior to issuance of the lease, the lease offer must be rejected. R. C. Altrogge, 78 IBLA 24 (1983), and cases cited therein. The Department simply has no discretion to issue a noncompetitive oil and gas lease for such lands. McDade v. Morton, 353 F. Supp. 1006 (D.C.C. 1973) aff'd, 494 F.2d 1156 (D.C. Cir. 1974); Frederick W. Lowey, 76 IBLA 195, 198 (1983).

Appellant challenges the determination that a portion of the land described in his offer is situated within a KGS. The burden of proving that

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6/ The Board did not hold that BLM may not place the burden on the offeror to provide a proper metes and bounds description of available lands, but merely that it is error to reject an offer for the entire tract without providing the offeror such an opportunity.

the determination is in error is on appellant. R. C. Altrogge, supra. The KGS determination cited by BLM in this case in support of its decision rejecting appellant's lease offer specifically pertained to those lands embraced in the prior producing lease which we have already found to be unavailable for over-the-counter leasing. However, it does not appear that BLM has undertaken any recent study of the KGS status of either these lands or that part of the tract described by appellant not embraced in the former lease. The February 1984 memorandum from the District Manager, Tulsa District Office, to the State Director, indicates that the KGS determination cited in the BLM decision was based on the fact that such areas, i.e., "old protective lease areas," "were productive of oil and (or) gas, or still have potential drainage." No evidence was offered in support of these statements. Appellant, in contrast, has offered evidence consisting of geologic reports in support of his contention that the prior productive formations were depleted and that the existence of additional productive formations in the subject lands is highly speculative.

Under the circumstances, we find it necessary to remand the case to BLM as to those lands embraced in appellant's lease offer which were not included in the prior oil and gas lease to allow BLM to reevaluate the KGS status of the lands. This is a necessary prerequisite to leasing under the Act of October 19, 1984, which mandates "That prior to any such leasing the Department of the Interior must do a detailed reevaluation to determine if the lands are within a known geologic structure." P.L. 98-529, 98 Stat. 2697. There is no authority for further leasing in the absence of such a detailed reevaluation and no indication of record that such a study has been completed. On remand, BLM may consider the geologic reports tendered by appellant.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified in part, set aside in part, and the case is remanded to BLM for further action consistent herewith.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Kathryn A. Lynn  
Administrative Judge, Alternate Member

